

**A Nuemera (M) Sdn Bhd v Malaysian Communications and
Multimedia Commission**

B HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS
NO WA-24NCC(ARB)-7-02 OF 2023
ATAN MUSTAFFA J
14 MARCH 2024

C *Arbitration — Award — Correction of error in award — After issuance of final
award, arbitral tribunal granted party's application to correct interest
commencement date on an item of damages payable — Original interest
commencement date in final award was illogical as principal amount was not due
and payable at the relevant time — Whether arbitral tribunal acted within its
D powers under s 35(1)(a) of Arbitration Act 2005 in correcting the inadvertent error
to reflect its true intention when it made the award on interest — Whether arbitral
tribunal's correction of error did not amount to a review of the merits of the final
award and did not offend the principle of functus officio*

E The plaintiff and defendant had entered into a contract under which the
plaintiff was appointed to build, operate and manage a national public cellular
blocking service. About five years into the contract, the defendant suspended
the plaintiff's appointment pending investigation into the occurrence of
F certain alleged breaches of the agreement. On 27 February 2018, the plaintiff
commenced arbitration proceedings to challenge its suspension but continued
to invoice the defendant for its monthly charges. On 3 October 2022, the
arbitral tribunal in its final award declared, inter alia, that the plaintiff's
suspension was valid and warranted and that the defendant should pay the
G plaintiff all the pre-suspension and post-suspension charges that were due to it
with interest. The 5% per annum interest rate on the post-suspension charges
were ordered to commence from the date of the notice of arbitration, ie, 27
February 2018. After giving the plaintiff due notice, the defendant applied to
the arbitral tribunal to amend the interest commencement date on the
H post-suspension charges in the final award to 1 January 2019 as the total
principal amount on which the interest was ordered to run was not due and
payable as at 27 February 2018. The arbitral tribunal conceded that the
misstatement of the interest commencement date was an accidental slip on its
part and issued an addendum award amending the commencement date to
I 1 January 2019, which was when the total principal amount became due and
payable to the plaintiff. The plaintiff, however, disagreed with the issuance of
the addendum award and vide the instant originating summons ('OS') applied
to set it aside, arguing that the arbitral tribunal became functus officio after
issuance of the final award and did not have power to make the correction.

Held, dismissing the OS:

- (1) The defendant had succeeded in showing that the addendum award was issued pursuant to the arbitral tribunal's statutory powers of correction and was not liable to be set aside (see para 110).
- (2) The arbitral tribunal had acted entirely within its statutory remit under s- 35 of the Arbitration Act 2005 ('the AA') in issuing the addendum award to correct an inadvertent error in the interest computation in the final award. The correction of the interest commencement date fell squarely within the scope of 'error in computation ... or other error of similar nature' under s 35(1)(a) of the AA, as it rectified an accidental slip that had caused the final award to inaccurately reflect the arbitral tribunal's true intention to award interest on the post-suspension charges from the date they became due (see para 106).
- (3) The arbitral tribunal's power to make such a correction was reinforced by the clear language of s 35 of the AA, the corresponding provisions in the AIAC Arbitration Rules 2018 (under which the present arbitration was conducted) and persuasive judicial authority interpreting similar statutory provisions. Notably, the plaintiff's own concessions on the scope of permissible corrections under s 35(1)(a) of the AA — as evinced by its reliance on *Econ Piling Pte Ltd and another (both formerly trading as Econ-NCC Joint Venture) v Shanghai Tunnel Engineering Co Ltd* [2011] 1 SLR 246 — undermined its present attempt to characterise the arbitral tribunal's correction as a mere error of judgment that was immune to correction (see para 107).
- (4) The plaintiff's arguments on the proper interpretation of s 35(1)(a) of the AA, the application of the *functus officio* doctrine and the invocation of the *ejusdem generis* and *noscitur a sociis* principles were not sustainable. The arbitral tribunal's correction in the addendum award did not constitute a review of the merits of the final award and was not precluded by the *functus officio* doctrine, as it fell within the specific statutory exception carved out by s 35 of the AA. The language of s 35(1)(a) could not bear the unduly narrow construction contended for by the plaintiff, whether based on *ejusdem generis* or *noscitur a sociis* or otherwise. Parliament must be taken to have intended that a correction falling properly within the scope of s 35 did not violate s 36. It was a legislative balance between the policies of finality and the need to rectify certain inadvertent errors in the award (see paras 49 & 108).
- (5) The addendum award represented a legitimate exercise of the arbitral tribunal's corrective jurisdiction under s 35 of the AA and not an impermissible variation or review of the final award that contravened s 36. It gave effect to the arbitral tribunal's manifest intention by bringing the interest computation into alignment with the undisputed facts,

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- A without altering the substance of the arbitral tribunal's decision on the plaintiff's entitlement to the post-suspension charges and interest thereon (see para 109).

[Bahasa Malaysia summary]

- B Plaintiff dan defendan telah memasuki kontrak di mana plaintiff telah dilantik untuk membina, mengendalikan dan mengurus perkhidmatan penyekatan selular awam negara. Kira-kira lima tahun dalam kontrak, defendan menggantung pelantikan plaintiff sementara menunggu siasatan ke atas berlakunya dakwaan pelanggaran perjanjian tertentu. Pada 27 Februari 2018, C plaintiff memulakan prosiding timbang tara untuk mencabar penggantungannya tetapi terus menginvois defendan untuk caj bulannya. Pada 3 Oktober 2022, tribunal timbang tara dalam award akhirnya mengisytiharkan, antara lain, bahawa penggantungan plaintiff adalah sah dan wajar dan bahawa defendan harus membayar plaintiff semua caj D pra-penggantungan dan pasca-penggantungan yang perlu dibayar kepadanya dengan faedah. Kadar faedah 5% setahun ke atas caj pasca penggantungan diperintahkan bermula dari tarikh notis timbang tara, iaitu, 27 Februari 2018. Selepas memberi plaintiff notis sewajarnya, defendan memohon kepada E tribunal timbang tara untuk meminda tarikh permulaan faedah pada caj selepas penggantungan dalam award akhir kepada 1 Januari 2019 sebagai jumlah amaun prinsipal di mana faedah diarahkan untuk berjalan yang perlu dan kena dibayar pada 27 Februari 2018. Tribunal timbang tara mengakui bahawa salah nyata tarikh permulaan faedah adalah kesilapan tidak sengaja di F pihaknya dan mengeluarkan award tambahan yang meminda tarikh permulaan kepada 1 Januari 2019, iaitu apabila jumlah amaun prinsipal perlu dan kena dibayar kepada plaintiff. Plaintiff, bagaimanapun, tidak bersetuju dengan pengeluaran Anugerah Tambahan dan melalui saman pemula semasa ('OS') memohon untuk mengenyepikannya, dengan alasan bahawa tribunal timbang tara menjadi functus officio selepas pengeluaran award akhir dan G tidak mempunyai kuasa untuk membuat pembetulan.

Diputuskan, menolak OS:

- H (1) Defendan telah berjaya menunjukkan bahawa award tambahan telah dikeluarkan menurut kuasa pembetulan berkanun tribunal timbang tara dan tidak harus diketepikan (lihat perenggan 110).
- I (2) Tribunal timbang tara telah bertindak sepenuhnya dalam bidang kuasa berkanunnya di bawah s 35 Akta Timbang Tara 2005 ('ATT') dalam mengeluarkan award tambahan untuk membetulkan kesilapan yang tidak disengajakan dalam pengiraan faedah dalam award akhir. Pembetulan tarikh permulaan faedah berada dalam skop 'kekhilafan dalam pengiraan ... atau kekhilafan lain yang serupa' di bawah s 35(1)(a) ATT, kerana ia membetulkan kesilapan tidak sengaja yang telah menyebabkan award akhir untuk menggambarkan secara tidak tepat niat

- sebenar tribunal timbang tara untuk menganugerahkan faedah ke atas caj pasca penggantungan dari tarikh ia perlu dibayar (lihat perenggan 106). A
- (3) Kuasa tribunal timbang tara untuk membuat pembetulan sedemikian diperkukuh oleh bahasa yang jelas dalam s 35 ATT, peruntukan yang sepadan dalam Peraturan Timbang Tara AIAC 2018 (di mana timbang tara semasa dijalankan) dan otoriti persuasif kehakiman yang mentafsir peruntukan undang-undang yang serupa. Terutama, konsesi plaintif sendiri terhadap skop pembetulan yang dibenarkan di bawah s 35(1)(a) ATT — seperti yang dibuktikan oleh pergantungannya dalam *Econ Piling Pte Ltd and another (both formerly trading as Econ-NCC Joint Venture) v Shanghai Tunnel Engineering Co Ltd* [2011] 1 SLR 246 — merendahkan percubaan semasa untuk mencirikan pembetulan tribunal timbang tara sebagai kesilapan penghakiman semata-mata yang kebal terhadap pembetulan (lihat perenggan 107). B
- (4) Hujah plaintif mengenai tafsiran yang betul bagi s 35(1)(a) ATT, penggunaan doktrin *functus officio* dan penggunaan prinsip *ejusdem generis* and *noscitur a sociis* tidak dapat dipertahankan. Pembetulan tribunal timbang tara dalam Anugerah Tambahan tidak membentuk semakan semula merit award akhir dan tidak dihalang oleh doktrin *functus officio*, kerana ia termasuk dalam pengecualian berkanun khusus yang ditetapkan oleh s 35 ATT. Bahasa s 35(1)(a) tidak dapat menanggung pembinaan yang terlalu sempit yang dipertikaikan oleh plaintif, sama ada berdasarkan *ejusdem generis* atau *noscitur a sociis* atau sebaliknya. Parlimen mesti dianggap berhasrat bahawa pembetulan yang termasuk secara teratur dalam skop s 35 tidak melanggar s 36. Ia adalah keseimbangan perundangan antara dasar muktamad dan keperluan untuk membetulkan kesilapan tertentu yang tidak disengajakan dalam award (lihat perenggan 49 & 108). C
- (5) Award tambahan mewakili pelaksanaan yang sah bagi bidang kuasa pembetulan tribunal timbang tara di bawah s 35 ATT dan bukannya perubahan atau semakan yang tidak dibenarkan bagi award akhir yang melanggar s 36. Ia memberi kesan kepada niat nyata tribunal timbang tara dengan membawa pengiraan faedah ke dalam penjajaran dengan fakta yang tidak dipertikaikan, tanpa mengubah intipati keputusan tribunal timbang tara mengenai kelayakan plaintif terhadap caj pasca penggantungan dan faedah ke atasnya (lihat perenggan 109).] D
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Cases referred to

- CNA v CNB and another and another matter* [2021] SGHC 192; [2022] 3 SLR 604, HC (folld) I
- Econ Piling Pte Ltd and another (both formerly trading as Econ-NCC Joint Venture) v Shanghai Tunnel Engineering Co Ltd* [2011] 1 SLR 246, HC (refd)

- A *Gannet Shipping Ltd v Eastrade Commodities Inc; Eastrade Commodities Inc v Gannet Shipping Ltd* [2002] 1 All ER (Comm) 297, QBD (refd)
Kelana Erat Sdn Bhd v Niche Properties Sdn Bhd and another application [2012] 5 MLJ 809, HC (refd)
- B *Lembaga Kumpulan Wang Simpanan Pekerja v Arulananda K Manickam* [2017] 10 MLJ 461, HC (folld)
Obrascon Huarte Lain SA (trading as OHL Internacional) v Qatar Foundation for Education, Science and Community Development [2020] EWHC 1643 (Comm), QBD (refd)
- C *Pancaran Prima Sdn Bhd v Iswarabena Sdn Bhd and another appeal* [2021] 1 MLJ 1; [2020] 9 CLJ 466, FC (refd)
Rees v Windsor-Clive and others [2020] EWHC 2986 (Ch), Ch D (folld)
Tay Eng Chuan v United Overseas Insurance Ltd [2009] 4 SLR 1043, HC (distd)
- D *Tenaga Nasional Bhd v Majlis Daerah Segamat* [2022] 2 MLJ 119, FC (refd)

Legislation referred to

- Agricultural Holdings Act 1986 [UK]
Arbitration Act 2005 ss 35, (1)(a), (2), 36, 36(1), 36(2), 37, 37(1)(a)(v), (1)(b)(ii), (2)(b), 39(1)(b), 43(1)(a), 50(3)
- E Local Government Act 1976
Rules of Court 2012 O 20 r 11
Arbitration Act 1996 [UK] ss 57(3)(a), 67, 68
- F *Liew Teck Huat (with Ong Kang Nyong and Sufiah Yussof) (Zaid Ibrahim Suflan TH Liew & Partners) for the plaintiff.*
Saritha Devi (with Nur Ainnabila Rosdi) (Firoz Julian) for the defendant.

Atan Mustaffa J:

G INTRODUCTION

- [1] In the realm of arbitration, where finality is prized and the *functus officio* doctrine holds sway, can an arbitral tribunal revisit its award to correct an error in the computation of interest? This question, which pits the principle of conclusiveness against the pursuit of accuracy, lies at the heart of the present dispute between the plaintiff, Nuemera (M) Sdn Bhd, and the defendant, Malaysian Communications and Multimedia Commission. The plaintiff, having secured a favourable final award from the learned Arbitral Tribunal, cries foul at the subsequent issuance of an addendum award amending the date from which interest is to run, arguing that the tribunal was spent and could not thus vary its original decision. The defendant, however, maintains that the addendum award merely corrects an inadvertent computational error within the narrow confines of the Arbitral Tribunal's statutory power, leaving the substance of the final award intact. The resolution of this conundrum requires
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a delicate balancing of the need to uphold arbitral finality on the one hand, and the imperative to give effect to the true intention of the Arbitral Tribunal on the other, a task that this court must undertake with utmost circumspection.

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BACKGROUND FACTS

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[2] The plaintiff and the defendant entered into an agreement for the building, operation and management of a National Public Cellular Blocking Service ('PCBS agreement') on 3 May 2013.

[3] On 26 January 2018, the defendant suspended the plaintiff's appointment under the PCBS agreement pending investigation into potential breaches of the agreement. Despite the suspension, the plaintiff issued the defendant an invoice dated 10 February 2018 for RM5,618,000 for Public Cellular Blocking Service ('PCBS') charges for February 2018. The defendant received this invoice on 23 February 2018.

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[4] The plaintiff commenced arbitration proceedings against the defendant on 27 February 2018 via a notice of arbitration to challenge the suspension.

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[5] From February 2018 to December 2018, the plaintiff continued issuing the defendant monthly invoices for PCBS charges.

[6] On 3 October 2022, the Arbitral Tribunal issued a final award that:

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- (a) declared the defendant's suspension of the plaintiff's appointment under the PCBS agreement as valid and warranted;
- (b) declared that the non-renewal of the PCBS agreement for a second five-year term was warranted;
- (c) ordered the defendant to pay the plaintiff RM53,895,000 for monthly 'charges' from April 2017 to January 2018 ('pre-suspension charges') with 5%pa interest from the notice of arbitration date until payment;
- (d) ordered the defendant to pay the plaintiff RM59,362,500 for monthly 'charges' from February 2018 to December 2018 ('post-suspension charges'), with 5%pa interest from the notice of arbitration date until payment;
- (e) ordered the parties to bear their own costs; and
- (f) ordered the defendant to bear 40% and the plaintiff to bear 60% of the arbitrators' additional fees estimated at RM615,000.

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[7] On 31 October 2022, the defendant paid the plaintiff a total of RM125,860,070.55 comprising the pre-suspension charges, post-suspension

A charges, and interest on the pre-suspension charges from 27 February 2018 until payment on 31 October 2022.

B [8] On 2 November 2022, the defendant applied for a correction of the interest order on the post-suspension charges to start from the final award date instead. The parties exchanged submissions on this correction application on 15 November 2022 and 23 November 2022. On 1 December 2022, the Arbitral Tribunal issued an addendum award agreeing with the defendant, correcting the interest start date on the post-suspension charges from the notice of arbitration date of 27 February 2018 to 1 January 2019, which is the date upon which the invoices became due under the PCBS agreement.

C [9] On 20 December 2022, the defendant paid the plaintiff a further RM11,376,457.19, being the 5%pa interest on the post-suspension charges from 1 January 2019 until payment on 31 October 2022.

THE PLAINTIFF'S ORIGINATING SUMMONS

E [10] The plaintiff filed this originating summons to set aside the addendum award dated 1 December 2022 issued by the Arbitral Tribunal on the ground that the Arbitral Tribunal did not have the power to make the correction to the interest start date on the post-suspension charges from 27 February 2018 to 1 January 2019. In the final award dated 03 October 2022, the Arbitral Tribunal had ordered the defendant to pay the post-suspension charges with 5%pa interest from 27 February 2018 until payment. The plaintiff contends this correction amounts to varying or amending the final award, which is not permitted under s 36 of the Arbitration Act 2005 ('the AA 2005'), and the addendum award should therefore be set aside.

G THE LAW

H [11] Section 36(1) of the AA 2005 enshrines the principle of the finality of arbitral awards. It provides that an award issued by an arbitral tribunal 'shall be final and binding on the parties'. This is a reflection of the *functus officio* doctrine, which precludes a tribunal from revisiting the merits of its decision once the final award has been made.

I [12] However, s 36(2) carves out a limited exception to finality. It states that the arbitral tribunal shall not vary, amend, correct, review, add to or revoke an award which has been made, 'except as specifically provided for in section 35'.

[13] Section 36 of the AA 2005 provides:

36 An award is final and binding

- (1) An award made by an arbitral tribunal pursuant to an arbitration agreement shall be final and binding on the parties and may be relied upon by any party by way of defence, set-off or otherwise in any proceedings in any court. **A**
- (2) The arbitral tribunal shall not vary, amend, correct, review, add to or revoke an award which has been made except as specifically provided for in section 35. **B**
- [14]** Section 35(1)(a), in turn, allows a party to request the arbitral tribunal 'to correct in the award any error in computation, any clerical or typographical error or other error of similar nature'. Pursuant to s 35(2), if the tribunal considers the request to be justified, it shall make the correction within 30 days of receipt of the request. **C**
- [15]** Section 35 of the AA 2005 provides:
- 35 Correction and interpretation of award or additional award **D**
- (1) A party, within thirty days of the receipt of the award, unless any other period of time has been agreed upon by the parties —
- (a) *upon notice to the other party, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error or other error of similar nature; or* **E**
- (b) upon notice to and with the agreement of the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.
- (2) *Where the arbitral tribunal considers the request made under subsection (1) to be justified, it shall make the correction or give the interpretation within thirty days of the receipt of the request and such interpretation shall form part of the award.* **F**
- (3) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) on its own initiative within thirty days of the date of the award. **G**
- (4) Unless otherwise agreed by the parties, a party may, within thirty days of the receipt of the award and upon notice to the other party, request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. **H**
- (5) Where the arbitral tribunal considers the request under subsection (4) to be justified, it shall make the additional award within sixty days from the receipt of such request.
- (6) The arbitral tribunal may, where it thinks necessary, extend the period of time within which it shall make a correction, interpretation or an additional award under this section. **I**
- (7) The provisions of section 33 shall apply to a correction or interpretation of the award or to an additional award.

A [16] Section 35 of the AA 2005 is modelled on article 33 of the UNCITRAL Model Law on International Commercial Arbitration. The underlying policy is to permit the correction of inadvertent errors by the tribunal, while preserving the finality of the award on the substantive merits. This balances two important principles in arbitration: party autonomy and minimal curial intervention.

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[17] Article 38 of the AIAC Arbitration Rules 2018 ('AIAC Rules'), under which the present arbitration was conducted, contains similar provisions on the correction of awards.

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Article 38 Correction of the Award

1. Within 30 days after the receipt of the award, a Party, with notice to the other Parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.
 2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
 3. Such corrections shall be in writing and shall form part of the award. The provisions of article 3–4, paragraphs 2 to 6, shall apply.
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F [18] The courts have interpreted s 35 and analogous provisions in arbitration legislation and rules to cover errors that are inadvertent and do not affect the substance of the tribunal's decision. This includes computational, clerical, and typographical errors, as well as errors 'of a similar nature.' The latter phrase has been held to encompass situations where the tribunal accidentally overlooked a fact or made an inadvertent omission: see *CNA v CNB and another and another matter* [2021] SGHC 192; [2022] 3 SLR 604 (Singapore HC), *Obrascon Huarte Lain SA (trading as OHL Internacional) v Qatar Foundation for Education, Science and Community Development* [2020] EWHC 1643 (Comm), *Rees v Windsor-Clive and others* [2020] EWHC 2986 (Ch), and *Gannet Shipping Ltd v Eastrade Commodities Inc; Eastrade Commodities Inc v Gannet Shipping Ltd* [2002] 1 All ER (Comm) 297 (English HC).

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[19] On the other hand, errors of law, fact or judgment do not fall within s 35, even if made inadvertently: see *Lembaga Kumpulan Wang Simpanan Pekerja v Arulananda K Manickam* [2017] 10 MLJ 461 (HC) and *Econ Piling Pte Ltd and another (both formerly trading as Econ-NCC Joint Venture) v Shanghai Tunnel Engineering Co Ltd* [2011] 1 SLR 246 (Singapore HC).

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[20] Where a party contends that the correction is beyond the scope of s 35

and effectively constitutes a review of the tribunal's decision, the recourse is to apply to set aside the award under s 37 of the AA 2005. The material grounds for the present case are found in s 37(1)(a)(v), which applies where the award 'contains decisions on matters beyond the scope of the submission to arbitration', and s 37(1)(b)(ii) read with s 37(2)(b), which applies where 'a breach of the rules of natural justice occurred ... in connection with the making of the award'.

[21] Section 37 of the AA 2005 provides:

Application for setting aside

(1) An award may be set aside by the High Court only if —

(a) the party making the application provides proof that —

- (i) a party to the arbitration agreement was under any incapacity;
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or, failing any indication thereon, under the laws of Malaysia;
- (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present that party's case;
- (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
- (v) *subject to subsection (3), the award contains decisions on matters beyond the scope of the submission to arbitration; or*
- (vi) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act; or

(b) the High Court finds that —

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia; or
- (ii) the award is in conflict with the public policy or Malaysia.

(2) Without limiting the generality of subparagraph (1)(b)(ii), an award is in conflict with the public policy of Malaysia where —

- (a) the making of the award was induced or affected by fraud or corruption; or
- (b) a breach of the rules of natural justice occurred —
 - (i) during the arbitral proceedings; or

- A (ii) in connection with the making of the award of Malaysia.
- (3) Where the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside.
- B [22] The courts have emphasised that an award may be set aside under s 37 only if one of the specified grounds is satisfied as held in see *Pancaran Prima Sdn Bhd v Iswarabena Sdn Bhd and another appeal* [2021] 1 MLJ 1; [2020] 9 CLJ 466. The Federal Court held:
- C [141] The ‘very low’ threshold for s 37 as decided in *Petronas Penapisan and Sigur Ros* must be understood in the context it was made, ie, that compared to s 42, the threshold under s 37 is ‘very low’. In other words, it is ‘very low’ relative to the threshold under s 42. It must be remembered that the grounds enumerated in s 37 are exhaustive and as such the court cannot set aside an award for reasons other than those that are listed.
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- E [23] This underscores the policy of minimal curial intervention in arbitral awards and places the burden on the applicant to establish a recognised ground for setting aside.
- F [24] These then are the key legal principles to be applied in determining whether the addendum award should be set aside. The core issues are: (a) whether the correction in the addendum award falls within the permissible scope of s 35 of the AA 2005 and the corresponding provisions of the AIAC Rules, and (b) whether there are any grounds under s 37 to set aside the addendum award as constituting a decision beyond the scope of submission to arbitration or a breach of natural justice.
- G THE PLAINTIFF’S SUBMISSIONS
- H [25] The plaintiff submits that the final award is final and binding under s 36 of the AA 2005. It cannot be amended except as specifically provided in s 35, which only allows correction of any error in computation, any clerical or typographical error or other error of similar nature.
- I [26] The plaintiff contends that s 35 applies to situations where the recording of an award does not represent what the tribunal intended, such as incorrectly computing figures or accidentally writing something different from what was intended. It does not apply where the tribunal makes an error of judgment or mistake in law or fact.
- [27] Here, the plaintiff argues that if interest was awarded from an earlier date than strictly permitted, that is at most an error of judgment in the award.

The Arbitral Tribunal was entitled to order interest on the post-suspension charges sum from the notice of arbitration date. Whether interest should be awarded, on what amount and for what period is a matter of discretion that the Arbitral Tribunal exercised in its substantive decision.

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[28] It is not permissible for the defendant to now seek to unravel that decision by invoking s 35. The interest awarded was a decision made by the Arbitral Tribunal, not a typographical, clerical or computation error. It therefore falls outside the scope of s 35.

B

[29] The plaintiff submits that once the Arbitral Tribunal issued the final award, it was *functus officio*. The powers under s 35 are residual powers to correct specific errors in computation or in recording the award. They do not extend to the Arbitral Tribunal changing its mind on a decision made, as that would be a disguised appeal.

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THE DEFENDANT'S SUBMISSIONS

[30] The defendant submits that s 35 of the AA 2005 and article 38 of the AIAC Rules expressly empower the Arbitral Tribunal to correct three categories of errors in the final award: (a) any error in computation; (b) any clerical or typographical error; or (c) any error of omission of a similar nature. The defendant argues the phrase 'any error or omission of a similar nature' indicates that so long as it is an error of some kind, it can be corrected.

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[31] The defendant contends that the Arbitral Tribunal had the power to correct the starting date of the late payment interest on the post-suspension charges, as it was an inadvertent error that falls within the permitted scope of s 35 and article 38. The correction did not affect the Arbitral Tribunal's substantive decision that the plaintiff was entitled to those charges and to late payment interest.

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[32] The defendant submits the Arbitral Tribunal simply overlooked the fact that at the date of the notice of arbitration, the post-suspension charges were not yet due for payment under the PCBS agreement. Most of those charges did not even exist at that point. As such, awarding interest from the notice of arbitration date was an error correctable by the Arbitral Tribunal.

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[33] The defendant argues this position is supported by case law, where courts have taken a wider interpretation of 'any error or omission of a similar nature' to cover errors in the nature of inadvertent acts or omissions by the tribunal that, if corrected, do not affect the substance of what the tribunal intended to decide.

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- A [34] The defendant contends s 35 of the AA 2005 and article 38 AIAC Rules preclude any argument that the Arbitral Tribunal was functus officio, as these provisions clearly allow corrections to be made. There are no grounds to set aside the addendum award under s 37 of the AA 2005, as the correction was not a new decision or reference to arbitration, and there was no breach of natural justice since both parties had the opportunity to submit on the issue.
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ANALYSIS AND FINDINGS

Whether the Arbitral Tribunal exceeded its statutorily prescribed powers

- C [35] The overarching issue in this application is whether the Arbitral Tribunal acted within its statutory power under s 35 of the AA 2005 in issuing the addendum award dated 1 December 2022 to correct an error in the computation of interest in the final award dated 3 October 2022, and if so, whether this contravenes s 36 of the AA 2005.
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- E [36] The plaintiff submits that the addendum award contravenes s 36, which mandates that an arbitral award is final and binding and can only be varied, amended, corrected, reviewed, added to or revoked as permitted by s 35. The plaintiff argues that the Arbitral Tribunal's correction of the interest computation is beyond the scope of s 35, as it amounts to an impermissible review of the Arbitral Tribunal's decision.

- F [37] The defendant contends that the addendum award falls squarely within the Arbitral Tribunal's power under s 35(1)(a) to 'correct in the award any error in computation, any clerical or typographical error or other error of similar nature'. The defendant submits that the Arbitral Tribunal's inadvertent error in awarding interest on the post-suspension charges from the notice of arbitration date instead of the date those charges became due is an 'error of similar nature' that can be corrected under s 35, without offending the principle of finality in s 36. Further, the defendant points to article 38 of the AIAC Rules as containing a similar power of correction.
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- H [38] I have carefully considered the parties' submissions and the applicable legal provisions and case law. In my judgment, the defendant's position is correct, for the following reasons.

- I [39] First, s 35(1)(a) of the AA 2005 expressly empowers an arbitral tribunal to correct 'any error in computation, any clerical or typographical error or other error of similar nature' in its award. The inclusion of the words 'other error of similar nature' clearly indicates that Parliament intended the categories of errors that can be corrected to extend beyond the specifically enumerated computational, clerical and typographical errors.

[40] This is reinforced by article 38 of the AIAC Rules, which governs the present arbitration. Article 38(1) contains language virtually identical to s 35(1)(a). When parties agree to arbitrate under institutional rules, they are taken to have consented to the procedures and powers provided therein.

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[41] What then is the meaning and scope of ‘other error of similar nature’? In the absence of any contrary definition in the AA 2005, these words should be given their natural and ordinary meaning, with regard to the legislative purpose and context. In my view, the common thread linking computational, clerical and typographical errors is that they are all inadvertent errors that do not reflect the true intention of the tribunal. They involve the tribunal writing something different from what it meant to write. Seen in this light, the phrase ‘other error of similar nature’ should encompass errors that are inadvertent and do not accurately reflect the tribunal’s intention, without altering the substance of its decision.

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[42] This interpretation is supported by case law from other Commonwealth jurisdictions with similar legislative provisions. In particular, I find highly persuasive the Singapore High Court decision of *CNA v CNB*, which examined the scope of article 33(1)(a) of the UNCITRAL Model Law (which is in *pari materia* with s 35(1)(a) of the AA 2005). There, the court held at [61] that the reference to ‘any errors of similar nature’ covers ‘errors in the nature of inadvertent acts or omissions by the arbitral tribunal, which if corrected, do not affect the substance of what the tribunal intended to decide.

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[43] Similarly, in the English case of *Rees v Windsor-Clive* the High Court in England upheld a tribunal’s correction of an aspect of its award that it had ‘overlooked and did not consider’, characterising this as ‘an accidental slip’ that could be corrected under s 57(3)(a) of the UK Arbitration Act 1996 (which is also analogous to s 35(1)(a) of the AA 2005).

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[44] Applying these principles to the facts, I accept the defendant’s submission that the Arbitral Tribunal’s error in awarding interest on the post-suspension charges from the notice of arbitration date instead of the date those charges became due was an inadvertent error that falls within the scope of s 35(1)(a).

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[45] As explained by the Arbitral Tribunal in paras 27–29 of the addendum award, its intention was always to award interest from the date the relevant charges became due. This is what was said:

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27. The intention of the Arbitral Tribunal in awarding interest on the Post-Suspension Sum in the final award was to award interest on the due date until payment the invoiced sums for the Charges which were undisputed until the date of payment at 5% per annum. This intention is manifest in the award of interest on the

- A** Charges amounting to RM53,895,000 that was due and payable for the pre-suspension period at the date of the Notice of Arbitration ('Pre-Suspension sum').
- The Arbitral Tribunal intended to, and did, fix the due date of the entire Pre-Suspension sum as at the date of the Notice of Arbitration. Neither Party has
- B** challenged the legality or propriety of the Arbitral Tribunal's award. Indeed, the Claimant has accepted the propriety of this award.
28. The Arbitral Tribunal admits that it inadvertently overlooked the fact that at the date of the Notice of Arbitration (i.e., 27.2.2018), the entire Post-Suspension Sum of RM 59,362,500 (covering eleven (11) monthly Invoices from February to
- C** December 2018) was not due for payment under Clause 39 of the PCBS Agreement at the date of the Notice of Arbitration. However, under Clause 39(13) of the PCBS Agreement, a monthly Charge is payable (whether or not the Respondent disputes its correctness), and accordingly, the first Invoice dated 10.2.2018 became due and payable on the date of the Notice of Arbitration.
- D** Accordingly, on this basis, the Arbitral Tribunal was in error in awarding interest on the subsequent ten (10) monthly Charges from 10.3.2018 to 14.12.2018.
29. What happened here was that the Arbitral Tribunal overlooked and did not consider that at the date of the Notice of Arbitration on 27.2.2018, the Post Suspension Sum was not due, and therefore no interest was payable on that sum
- E** from 27.2.2018. In overlooking this fact, the Arbitral Tribunal awarded interest for the period from 27.2.2018 to 31.12.2018. This was a manifest error arising from an accidental slip in overlooking this obvious fact.'
- F** [46] This is clear from how the Arbitral Tribunal awarded interest on the pre-suspension charges (which were all due by 27 February 2018) from that date. However, the Arbitral Tribunal 'inadvertently overlooked' that the post-suspension charges only became due from 23 March 2018 onwards, as the first invoice was only received by the defendant on 23 February 2018, with the
- G** remaining ten invoices issued between March to December 2018.
- [47] The Arbitral Tribunal's explanation is consistent with the general legal principle that interest is awarded to compensate a party for being kept out of money due to it. There is nothing to suggest the Arbitral Tribunal intended to
- H** depart from this principle by deliberately awarding interest for periods before the post-suspension charges were due.
- [48] The correction in the addendum award did not substantively change the Arbitral Tribunal's decision that the post-suspension charges and interest thereon were payable by the defendant. The defendant does not dispute its liability for those charges. The correction merely aligned the interest computation with the Arbitral Tribunal's manifest intention to award interest from the due dates. This is precisely the type of inadvertent error that s 35(1)(a) empowers the Arbitral Tribunal to correct.
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[49] I do not think this conclusion infringes s 36 of the AA 2005 or offends the principle of finality of arbitral awards. Section 36(2) expressly carves out the tribunal's power of correction in s 35 as an exception to the general prohibition against varying, reviewing or revoking an award. Parliament must be taken to have intended that a correction falling properly within the scope of s 35 does not violate s 36. This represents a legislative balance between the policies of finality and the need to rectify certain inadvertent errors in the award.

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[50] The addendum award did not entail a wholesale reopening and review of the merits of the Arbitral Tribunal's decision in the final award. The narrow jurisdiction to correct was exercised to give effect to the Arbitral Tribunal's intention by aligning the interest computation with the undisputed facts, without altering the substance of its ruling that the post-suspension charges and interest were due to the plaintiff. In these circumstances, upholding the addendum award does not undermine the finality of the final award.

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[51] For these reasons, I find that the Arbitral Tribunal acted within the permissible scope of its statutory power under s 35(1)(a) of the AA 2005 in issuing the addendum award to correct an inadvertent error in the interest computation in the final award. This does not contravene s 36 and is supported by the language of article 38 of the AIAC Rules as well as persuasive judicial authority interpreting similar provisions in other jurisdictions.

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[52] The plaintiff and defendant referred to a number of cases to support their respective arguments: *Obrascon Huarte Lain SA (trading as OHL Internacional) v Qatar Foundation for Education, Science and Community Development* [2020] EWHC 1643 (Comm), *CNA v CNB* and *Tay Eng Chuan v United Overseas Insurance Ltd* [2009] 4 SLR 1043. The court will address these cases in more detail.

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[53] In *Obrascon*, JV contractors challenged an addendum award issued by an International Chamber of Commerce (ICC) arbitration tribunal that made changes to the tribunal's Fourth Partial Award related to a construction dispute with the Qatar Foundation. The key issue was whether the tribunal had jurisdiction to make those changes under article 35 of the ICC Rules or had exceeded its powers. The court decided that the contractors' challenges under ss 67 (substantive jurisdiction) and 68 (serious irregularity) of the Arbitration Act 1996 should be dismissed, finding that the challenge did not properly fall under s 67 and that under s 68 the tribunal had not exceeded its powers, and even if it had, this did not cause substantial injustice to the contractors.

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[54] The court in *Obrascon* elucidated the latitude inherent in article 35 of the ICC Rules, analogous to s 35 of the AA 2005, which empowers the tribunal

- A to correct mistakes of a character akin to ‘clerical, computational or typographical errors.’ The jurisprudential guidance from *Obrascon* underscores a nuanced interpretation of such correctional powers. It is discerned that the scope of ‘errors of a similar nature’ encompasses a breadth of discretion that extends beyond mere clerical and computational oversights.
- B This acknowledges the inherent complexity in the adjudicative process and avoids an overly restrictive application that could undermine the Arbitral Tribunal’s capacity to rectify its intended meaning when it has not been properly conveyed in the award.
- C [55] The essence of the *Obrascon* ruling lies not in the latitude of interpretation for correction but in the recognition of the Arbitral Tribunal’s margin of appreciation. The High Court’s stance was that the Arbitral Tribunal’s amendments were indeed broader than clerical errors but fell within
- D the purview of ‘similar nature’ errors as they addressed matters inadvertently omitted from consideration. These modifications served to align the award with the Arbitral Tribunal’s original intention, thus upholding the substantive justice over procedural inflexibility.
- E [56] Applying this rationale to the case at hand, it becomes pertinent to determine whether the Arbitration Tribunal’s addendum award falls within the ambit of correcting an error of ‘similar nature’. The change from ‘the date of the Notice of Arbitration’ to ‘from 1 January 2019’ for the interest calculation may appear substantive but is, in fact, a realignment of the award to reflect the
- F accurate computation period as intended by the Arbitration Tribunal. Such a correction can reasonably be seen as within the sphere of authority vested in the Arbitration Tribunal to ensure that the award faithfully represents its adjudicatory will.
- G [57] The plaintiff’s argument, which is reminiscent of the contention addressed in *Obrascon*, relies on a narrow interpretation of the Arbitration Tribunal’s correctional power that could arguably lead to a miscarriage of justice due to an overly technical construal of the AA 2005. In a judicial system
- H where the quest for justice is paramount, such an interpretation is neither reasonable nor desirable.
- I [58] In the case of *Rees v Windsor-Clive*, a tenant challenged an arbitration award upholding the validity of three notices to quit served by his landlords under the Agricultural Holdings Act 1986. The key issues were whether the land was required for the relevant use within a relatively short time after the expiry of the notices, whether ‘building development’ encompassed development without buildings, and whether the arbitrator made procedural errors. The High Court in Wales decided that the arbitrator had not erred in

law or made serious procedural irregularities, and dismissed the tenant's appeal to set aside the arbitration award.

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[59] This case provides a pertinent illustration where the court recognised the legitimacy of correcting an award where the arbitrator had inadvertently overlooked a crucial aspect of the evidence, thereby misapplying it to only a part of the land in question. Upon realising this oversight, the arbitrator issued a corrected award. The court distinguished this from an impermissible review of the decision, acknowledging the arbitrator's correction as an effort to reflect the true intent of the original award, rather than to reassess the merits of the case. This action was upheld as falling within the remit of the arbitrator's powers to correct accidental slips or omissions.

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[60] The present case, in essence, aligns with the principles established in *Rees*. The Arbitral Tribunal, having identified an error in the date from which interest should run, corrected this error without delving into a reassessment of the merits of the case. The adjustment of the date for interest calculation from the date of the notice of arbitration to a specific date following the charges period can be regarded as an accidental slip or an omission of the kind contemplated by the law, analogous to a clerical or typographical error that does not implicate the Arbitration Tribunal's thought process or decision-making.

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[61] The plaintiff's contention that this correction exceeds the Arbitration Tribunal's authority and that the decision in *Rees* should not be applicable in the Malaysian context because it allegedly permits arbitrators to reconsider awards is not persuasive. The correction in question does not pertain to the Arbitration Tribunal's judgment on the substantive issues of the dispute but rather to the rectification of a demonstrable oversight in the implementation of that judgment.

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[62] In light of the foregoing, it would be an overly restrictive interpretation of the law to prohibit such corrections, which serve to give effect to the clear intent of the Arbitral Tribunal as reflected in its final award. To hold otherwise would be to prefer form over substance and undermine the practical administration of justice.

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[63] Furthermore, the plaintiff's concern that this interpretation allows arbitral tribunals a 'get out of jail free card' is unfounded. The safeguards within the AA 2005 and the AIAC Rules, alongside the court's supervisory jurisdiction, are sufficient to prevent the abuse of the correction process. This interpretation does not grant carte blanche to arbitral tribunals to revisit their

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A decisions, but rather ensures that their awards are free from clerical, typographical mistakes and errors of a similar nature which could unduly prejudice the parties.

B [64] In the case of *CNA v CNB*, CND and CNE filed applications in the Singapore High Court to set aside a partial arbitral award where the tribunal erred by granting a remedy not sought by the parties: it granted an order for CNA to account for profits, even though CNB and CNC had expressly abandoned that claim against CNA during the oral closing submissions. The court held that such an error was deemed correctable because it was inadvertent and did not alter the substance of the tribunal's intended decision. The decision articulates that an arbitral tribunal's correction power extends to inadvertent errors that, if remedied, do not affect the substance of the tribunal's decision. This principle is directly applicable to the instant matter; the Arbitral Tribunal's correction regarding the interest commencement date is analogous to the inadvertent errors contemplated by the *CNA v CNB* judgment.

E [65] Furthermore, the correction does not alter the substance of the final award but rather rectifies an oversight regarding the factual date upon which the invoices became due, in alignment with cl 39.8 of the PCBS agreement. As the Arbitral Tribunal has clarified in its addendum award, the imposition of interest from the date of the notice of arbitration for the Post-Suspension Invoices was inadvertent, given that not all invoices were due at that juncture.

F [66] The defendant's reliance on the AA 2005 and AIAC Rules is well-founded. The Arbitral Tribunal has utilised its statutory powers to amend an evident miscalculation of the date from which interest should run, thus ensuring that the award reflects the actual intent and decision of the Arbitration Tribunal. This action falls within the permissible scope of correction and is neither a review nor an appeal of its decision, as erroneously alleged by the plaintiff.

H [67] In essence, the Arbitral Tribunal's decision to issue the addendum award correcting the commencement date for the calculation of interest from the date of the notice of arbitration to the factual date upon which the invoices became due under the PCBS agreement, being 30 days after a correctly rendered invoice is acknowledged, constitutes a permissible correction of an inadvertent act that is squarely within the Arbitration Tribunal's mandate to correct under s 35 of the AA 2005 and article 38 of the AIAC Rules. It does not affect the Arbitration Tribunal's substantive ruling on the due sums, nor does it contravene s 36 of the AA 2005, as it is a specific provision allowed for under s 35.

[68] The plaintiff relies on the Singapore High Court case of *Tay Eng Chuan*

v United Overseas Insurance Ltd which delineates between permissible clerical corrections and impermissible substantive alterations. In this case, Tay Eng Chuan filed an application seeking an extension of the 28-day time limit to appeal against an arbitration award, arguing that the time should run from when he was notified of the outcome of his request to correct alleged mistakes in the award. The key issue was whether the time limit under s 50(3) of the Arbitration Act for appealing an arbitration award should begin from the date of the original award or from when the applicant was notified of the outcome of his request to correct the award. The court decided that the time limit of 28 days ran from the date of the original award, as s 43(1)(a) of the Arbitration Act only allowed correction of clerical or technical errors, not substantive changes to the award's findings, and there was no ambiguity in the award that would justify extending the time limit.

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[69] However, upon meticulous examination of the aforementioned case and the facts at hand, this court determines that the distinction drawn by the plaintiff does not hold. In *Tay Eng Chuan*, the corrections sought were fundamentally substantive as they attempted to convert a dismissal into an allowance of claims — a clear reversal of the tribunal's decision. Contrastingly, in the present matter, the Arbitral Tribunal did not revise its substantive decision regarding the entitlement of the plaintiff to the post-suspension charges and the late payment interest. Instead, the Arbitral Tribunal rectified the commencement date for the calculation of said interest — a correction well within the realm of clerical or accidental errors as envisioned by the legislative framework.

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[70] It is pivotal to acknowledge that interest, by its nature, is compensatory. It is intended to redress the loss of use of the principal sum. Therefore, the determination of the appropriate date from which interest should run is generally a secondary issue, ancillary to the principal adjudication of liability. Granting that the determination of such a date does involve an exercise of discretion, this exercise ought to be guided by the principles of fairness and the avoidance of unjust enrichment.

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[71] The contention of the plaintiff that the correction constituted an error of judgment rather than a clerical mistake is not persuasive. The final award, without the correction, would result in an interest award on a non-existent amount prior to the established start date, which would be in conflict with the principles of public policy in Malaysia - a ground for setting aside an award as stipulated in s 39(1)(b) of the AA 2005.

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[72] It is evident that the Arbitration Tribunal, through the addendum award, sought to correct an accidental slip or omission, thus bringing the final award into alignment with the established facts and the law, rather than

A re-adjudicating the merits of the case. The rectification does not disturb the quantum of the final award, nor does it upset the balance of the Arbitration Arbitral Tribunal's findings. It merely corrects the temporal aspect of the interest calculation, which appears to be a minor yet important detail to ensure the final award's coherence and compliance with legal norms.

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[73] In the final analysis, I am satisfied that the addendum award represents a legitimate exercise of the Arbitral Tribunal's power of correction, not an impermissible review of the merits of the final award. The defendant therefore succeeds on this issue.

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THE PLAINTIFF'S CONCESSION

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[74] The pivotal issue in this application turns on the scope of an arbitral tribunal's power to correct errors in its award under s 35 of the AA 2005. In this regard, it is of utmost significance that the plaintiff has itself conceded, through its reliance on *Econ Piling Pte Ltd and another (both formerly trading as Econ-NCC Joint Venture) v Shanghai Tunnel Engineering Co Ltd* [2011] 1 SLR 246, that an arbitral tribunal's power of correction extends to 'mistakes arising out of miscalculations, use of wrong data in calculations, [and] omission of data in calculations.

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[75] The plaintiff, in para 15 of its submissions, quoted the following passage from *Econ Piling*:

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Such errors would include mistakes arising out of miscalculations, use of wrong data in calculations, omission of data in calculations, and clerical or typographical errors made in the course of typing or drafting the award.

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[76] This was in the context of the Singapore High Court's discussion on the scope of correctable errors under a provision in pari materia with s 35(1)(a) of the AA 2005. The court's observations, which the plaintiff accepts, make it abundantly clear that an arbitral tribunal's power of correction extends to 'mistakes arising out of miscalculations, use of wrong data in calculations, [and] omission of data in calculations'.

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[77] Furthermore, in para 17 of its submissions, the plaintiff conceded that an 'error or omission of a similar nature' under s 35(1)(a) 'must reflect any kind of error where the words of an award do not reflect what the tribunal in fact decided.' This was reiterated in para 18, where the plaintiff emphasised that 'what matters is whether what is recorded is what the tribunal intended'.

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[78] The significance of these concessions cannot be overstated. Applying the very principles acknowledged by the plaintiff to the facts of this case, it

becomes evident that the Arbitral Tribunal's correction in the addendum award falls squarely within the scope of s 35(1)(a).

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[79] A plain reading of paras 27 and 28 of the addendum award demonstrates that the Arbitral Tribunal 'inadvertently overlooked' the fact that most of the post-suspension charges were not yet due as of the notice of arbitration date (27 February 2018). This caused the Arbitral Tribunal to erroneously use that date as the interest commencement date. However, the Arbitral Tribunal made it crystal clear that its actual intention was to award interest 'on the due date until payment'. This is consonant with the Arbitral Tribunal's treatment of the pre-suspension charges.

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[80] In these circumstances, I have no hesitation in finding that the use of 27 February 2018 instead of the dates the post-suspension charges became due was a patent case of the wrong data being used and the correct data being omitted in the interest computation -an error that the plaintiff itself recognises as falling within an arbitral tribunal's power of correction. Far from being a review of the Arbitral Tribunal's decision, the addendum award sought to give effect to the Arbitral Tribunal's true intention by aligning the interest computation with the undisputed facts. This is the very *raison d'être* of the correction power under s 35(1)(a).

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[81] Support for this conclusion is also found in the High Court's decision in *Lembaga Kumpulan Wang Simpanan Pekerja v Arulananda K Manickam* [2017] 10 MLJ 461. In that case, Mohd Nazlan J (as he then was) recognised at [12] that a correction may be made under the slip rule in O 20 r 11 of the Rules of Court 2012 (which encapsulates the same principles as s 35(1)(a)) if 'the order as drafted does not correctly state what the court actually decided and intended'. Whilst the learned judge found that it was unclear in that case whether the court had intended to award the payment in question, his reasoning supports the proposition that where a decision by a court or tribunal inadvertently fails to reflect its actual intention, this is precisely the type of error that the correction power is meant to address. That is exactly the situation here.

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[82] Reverting to the plaintiff's concessions, I find that they are wholly inconsistent with its attempt to characterise the Arbitral Tribunal's correction as a mere error of judgment that is immune to correction. On the evidence, there is nothing to suggest that the Arbitral Tribunal made any conscious decision that interest should commence before the post-suspension charges were due. Indeed, the unambiguous language of paras 27 and 28 of the addendum award entirely refutes such a notion. The irresistible conclusion is that this was nothing more than an inadvertent error in the computational process, not a substantive decision by the Arbitral Tribunal. I reiterate that the plaintiff has itself acknowledged that errors in calculation fall within the realm

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A of permissible corrections. It cannot now escape the consequences of its own concession.

B [83] For these reasons, I find that the Arbitral Tribunal acted entirely within the scope of its statutory power under s 35 of the AA 2005 in issuing the addendum award to correct an inadvertent error in the interest computation in the final award. The Arbitral Tribunal's correction is fully in alignment with the clear language and intent of s 35(1)(a), as recognised by the plaintiff's own concessions and supported by the applicable judicial authorities. The plaintiff's
C submissions to the contrary, with respect, are untenable in light of the evidence and the legal position it has itself acknowledged.

D [84] In conclusion, the Arbitral Tribunal's issuance of the addendum award was a proper exercise of its corrective jurisdiction and did not in any way contravene s 36 of the AA 2005. The plaintiff's challenge to the same therefore cannot succeed. The defendant must prevail on this issue.

EJUSDEM GENERIS AND NOSCITUR A SOCIIS

E [85] The plaintiff has sought to invoke the interpretive canons of *ejusdem generis* and *noscitur a sociis* to argue for a restrictive reading of the phrase 'other error of similar nature' in s 35(1)(a) of the AA 2005. The plaintiff contends that this phrase must be limited to errors of 'simple computation' or in 'recording an award', in line with the specific categories of computational, clerical and
F typographical errors that precede it. Applying this narrow construction, the plaintiff submits that the Arbitral Tribunal's correction of the interest commencement date in the addendum award falls outside the scope of s 35(1)(a).

G [86] With respect, I am unable to accept this argument. Whilst *ejusdem generis* and *noscitur a sociis* are undoubtedly relevant principles of statutory interpretation, they cannot be applied in a manner that would unduly fetter or frustrate the legislative intent behind s 35(1)(a).

H [87] The starting point is the language of the provision itself. Section 35(1)(a) empowers an arbitral tribunal to correct 'any error in computation, any clerical or typographical error or other error of similar nature'. It is immediately apparent that the categories of computational, clerical and typographical errors are expressed in broad terms, without any
I qualifiers to limit their scope. There is simply nothing in the natural and ordinary meaning of those words to suggest that only 'simple' computational errors, for example, are envisaged. If Parliament had intended to restrict the power of correction to errors of such a narrow compass, it could easily have employed language to that effect. The fact that it did not do so is a strong

indicator that such a restrictive reading was not intended.

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[88] This is reinforced by the inclusion of the phrase ‘or other error of similar nature’ in s 35(1)(a). The use of the disjunctive ‘or’ indicates that this phrase is not merely an extension of the enumerated categories, but a distinct category in its own right. The operative word is ‘similar’, which denotes that the nature of the error must share common features with computational, clerical and typographical errors, but not that it must be identical to those errors.

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[89] The common thread that binds these errors, as recognised in cases such as *CNA v CNB*, is that they are ‘errors in the nature of inadvertent acts or omissions by the arbitral tribunal, which if corrected, do not affect the substance of what the tribunal intended to decide’. Notably, there is no suggestion in *CNA v CNB* or any of the other authorities cited by the parties that computational errors are confined to those of a ‘simple’ nature or that correctable errors are limited to those in ‘recording an award’. Adopting such a narrow construction would not align with the substance of what the case law has recognised as being the unifying characteristic of the errors captured by s 35(1)(a).

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[90] Applying these principles to the present case, I am satisfied that the Arbitral Tribunal’s error in awarding interest on the post-suspension charges from 27 February 2018 instead of the dates those charges became due is an ‘other error of similar nature’ under s 35(1)(a). As explained in my decision on the earlier issues, this was clearly an inadvertent error on the part of the Arbitral Tribunal. It used the wrong commencement date and thereby omitted to use the correct dates in the interest computation. This squarely falls within the realm of computational or similar errors, as contemplated by s 35(1)(a). The fact that the correction exercise might have involved some complexity does not take it outside the scope of the provision.

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[91] The plaintiff’s attempt to restrictively interpret s 35(1)(a) as being limited to ‘simple’ computational errors or errors in ‘recording an award’, in reliance on the *ejusdem generis* and *noscitur a sociis* principles, is thus not supported by the statutory language, the applicable case law, or the nature of the Arbitral Tribunal’s error itself. Such an unduly narrow reading would deprive the words ‘other error of similar nature’ of any meaningful content and fail to give effect to the legislative intent to confer a reasonable measure of latitude on arbitral tribunals to correct inadvertent errors in their awards.

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[92] Furthermore, I am unable to agree with the plaintiff’s submission that the Federal Court’s decision in *Tenaga Nasional Bhd v Majlis Daerah Segamat* [2022] 2 MLJ 119 on the application of the *ejusdem generis* and *noscitur a sociis* principles requires the court to read s 35(1)(a) in the manner contended for by

- A the plaintiff. In that case, the Federal Court was concerned with the wholly distinct question of whether ‘machinery’ falls within the meaning of ‘land’ or ‘building’ under specific provisions of the Local Government Act 1976. The court’s decision was premised on the express statutory definitions and the legislative intent discernible therefrom. It was not concerned with the
- B correction of arbitral awards under s 35(1)(a) of the AA 2005, which must necessarily be interpreted on its own terms and context. Transposing the Federal Court’s reasoning to the present factual and legal matrix is, with respect, an untenable leap in logic.
- C [93] In the round, I find that the Arbitral Tribunal’s correction of the interest commencement date falls well within the scope of ‘other error of similar nature’ under s 35(1)(a) of the AA 2005. The plaintiff’s effort to read into the provision restrictions that are not justified by its language, object or purpose cannot be
- D sustained. The clear words of s 35(1)(a) encompass the Arbitral Tribunal’s correction. The plaintiff’s submissions on the interpretation of s 35(1)(a) and the application of *ejusdem generis and noscitur a sociis* must therefore be rejected. I hold that the defendant prevails on this issue.
- E FUNCTUS OFFICIO
- F [94] The plaintiff contends that the Arbitral Tribunal was functus officio upon issuing the final award dated 3 October 2022 and therefore had no jurisdiction to subsequently alter the interest start date on the post-suspension charges in the addendum award dated 1 December 2022. The plaintiff submits that the correction made in the addendum award goes beyond the scope of the tribunal’s limited post-award powers under s 35 of the AA 2005, which are confined to correcting computational, clerical, typographical or similar errors.
- G [95] The defendant argues that s 35 of the AA 2005 and article 38 of the AIAC Rules expressly empower the Arbitral Tribunal to correct certain errors in its award even after the award has been issued, and that this statutory exception necessarily qualifies the functus officio doctrine. The defendant further submits that the tribunal’s correction of the interest start date squarely falls
- H within the ambit of an ‘error in computation ... or other error of similar nature’ under s 35(1)(a), and does not amount to a review of the merits of the final award.
- I [96] The functus officio doctrine, under which an arbitral tribunal’s mandate comes to an end once it has rendered its final award, is well-established in arbitration law. This principle promotes finality and certainty, essential features of the arbitral process. However, as the defendant rightly points out, the doctrine is not absolute and is subject to statutorily-prescribed exceptions.

[97] One such exception is found in s 35(1)(a) of the AA 2005, which allows an arbitral tribunal to correct ‘any error in computation, any clerical or typographical error or other error of similar nature’. Article 38 of the AIAC Rules, under which the present arbitration was conducted, contains a similar provision. The clear intent behind these provisions is to permit the correction of inadvertent errors in the award, without disturbing the finality of the award on the substantive merits of the dispute.

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[98] In so far as a correction falls properly within the scope of s 35(1)(a), it constitutes a valid exercise of the tribunal’s limited statutory power and does not offend the *functus officio* principle. The clear words of s 35(2) empower the tribunal to make such corrections within the stipulated time frame ‘where the arbitral tribunal considers the request made under subsection (1) to be justified’.

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[99] The key question then is whether the correction made in the addendum award in this case can be characterised as an ‘error in computation ... or other error of similar nature’ under s 35(1)(a).

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[100] On the facts, the Arbitral Tribunal made it patently clear in paras 27 and 28 of the addendum award that it had ‘inadvertently overlooked’ that the post-suspension charges were not yet due as at the notice of arbitration date of 27 February 2018, and that its actual intention was to award interest from the date the charges became due. The use of 27 February 2018 as the interest start date was plainly an oversight, as it did not reflect the tribunal’s true decision that interest should run from the due date of the post-suspension charges.

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[101] In these circumstances, I have no hesitation in finding that the error in the interest start date falls squarely within the realm of ‘error of similar nature’ under s 35(1)(a). It was an accidental slip by the tribunal, closely akin to a computational error, that had the effect of rendering the interest award in the final award inconsistent with the tribunal’s manifest intention. Correcting this error did not entail any alteration of the tribunal’s decision that the plaintiff was entitled to the post-suspension charges and to interest thereon.

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[102] This conclusion aligns with the approach taken in cases such as *CNA v CNB*, where corrections of inadvertent errors or omissions that do not affect the substance of the tribunal’s intended decision have been found to fall within the equivalent of s 35(1)(a). Such errors are conceptually distinct from errors of judgment or law, which cannot be corrected under this provision.

I

[103] The plaintiff relied on *Kelana Erat Sdn Bhd v Niche Properties Sdn Bhd and another application* [2012] 5 MLJ 809 to argue that the Arbitral Tribunal in the present case was *functus officio* after issuing the final award and therefore

- A had no power to subsequently alter the interest start date on the post-suspension charges in the addendum award. In *Kelana Erat*, the High Court held that neither the AA 2005 nor the UNCITRAL Arbitration Rules provided for an arbitral tribunal to issue ‘clarifications’ of its award after the award had been rendered. The plaintiff sought to draw an analogy between the
- B request for ‘clarifications’ in *Kelana Erat* and the correction made by the Arbitral Tribunal in the addendum award in the present case. The plaintiff’s reliance on *Kelana Erat* is, with respect, misplaced. That case involved a request by one party for ‘clarifications’ of the arbitral award. The High Court held,
- C rightly, that neither the AA 2005 nor the UNCITRAL Rules (as they then were) provided for the tribunal to issue clarifications of its award. However, the present case does not concern a request for clarification. Rather, it involves a correction of an inadvertent error in the computational process of the award, which falls within the express terms of s 35(1)(a). The distinction is crucial.
- D [104] I also do not think that the functus officio doctrine is an impediment to the addendum award. Section 35 carves out a narrow and specific exception to functus officio, empowering the tribunal to correct certain defined errors. Parliament must be taken to have intended that a correction falling within the
- E scope of this provision does not violate the general prohibition against varying or revoking an award in s 36(2). The Arbitral Tribunal, in issuing the addendum award to rectify an error that it was authorised by statute to correct, acted within its proper remit and in a manner that is entirely consistent with the terms and spirit of the AA 2005.
- F [105] For these reasons, I find that the Arbitral Tribunal’s issuance of the addendum award correcting the interest commencement date was a valid exercise of its statutory powers under s 35 of the AA 2005 and did not contravene the functus officio principle. The plaintiff’s arguments on this issue
- G therefore cannot be sustained. The defendant must prevail on this point.

CONCLUSION

- H [106] For the reasons articulated above, I find that the Arbitral Tribunal acted entirely within its statutory remit under s 35 of the AA 2005 in issuing the addendum award dated 1 December 2022 to correct an inadvertent error in the interest computation in the final award dated 3 October 2022. The correction of the interest commencement date from 27 February 2018 to
- I 1 January 2019 squarely falls within the scope of ‘error in computation ... or other error of similar nature’ under s 35(1)(a), as it rectifies an accidental slip that had caused the final award to inaccurately reflect the Arbitral Tribunal’s true intention to award interest on the post-suspension charges from the date they became due.

[107] The Arbitral Tribunal's power to make such a correction is reinforced by the clear language of s 35, the corresponding provisions in the AIAC Rules, and persuasive judicial authority interpreting similar statutory provisions. Notably, the plaintiff's own concessions on the scope of permissible corrections under s 35(1)(a), as evinced by its reliance on *Econ Piling Pte Ltd and another v Shanghai Tunnel Engineering Co Ltd*, undermine its present attempt to characterise the Arbitral Tribunal's correction as a mere error of judgment immune to correction.

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[108] Furthermore, I do not find the plaintiff's arguments on the proper interpretation of s 35(1)(a), the application of the *functus officio* doctrine, or the invocation of the *ejusdem generis and noscitur a sociis* principles to be sustainable. The Arbitral Tribunal's correction in the addendum award does not constitute a review of the merits of the final award and is not precluded by the *functus officio* doctrine, as it falls within the specific statutory exception carved out by s 35. The language of s 35(1)(a) also cannot bear the unduly narrow construction contended for by the plaintiff, whether based on *ejusdem generis and noscitur a sociis* or otherwise.

C

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[109] In the final analysis, the addendum award represents a legitimate exercise of the Arbitral Tribunal's corrective jurisdiction under s 35 of the AA 2005, not an impermissible variation or review of the final award that contravenes s 36. It gives effect to the Arbitral Tribunal's manifest intention by bringing the interest computation into alignment with the undisputed facts, without altering the substance of the Arbitral Tribunal's decision on the plaintiff's entitlement to the post-suspension charges and interest thereon.

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[110] Accordingly, the plaintiff's originating summons to set aside the addendum award is dismissed with costs of RM10,000 to be paid by the plaintiff to the defendant (subject to the *allocatur*). The defendant has succeeded in demonstrating that the addendum award was issued pursuant to the Arbitral Tribunal's statutory powers of correction and is not liable to be set aside.

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OS dismissed.

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Reported by Ashok Kumar

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